

SERVED: September 29, 1992

NTSB Order No. EA-3686

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 23rd day of September, 1992

THOMAS C. RICHARDS, Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-12513
v.)	
)	
THOMAS FELIX COMBS,)	
)	
Respondent.)	

**ORDER DENYING PETITION FOR RECONSIDERATION
AND MODIFICATION OF BOARD ORDER**

The respondent has filed a petition for reconsideration and modification of Board Order No. EA-3616 (served July 2, 1992), which denied his appeal from a decision affirming the emergency revocation of his Airline Transport Pilot certificate.¹ In his petition, the respondent contends, among other things, that the Board should reconsider its decision and affirm a less harsh sanction because of asserted errors in the law judge's findings and because of precedent respondent believes shows that we have affirmed lesser sanctions for more serious conduct. We will deny the petition.

Although we recognize, as the Administrator points out, that respondent's petition is largely an attempt to circumvent the Board's previous refusal in Order EA-3616 to allow him to file a brief in answer to the Administrator's reply brief, we have satisfied ourselves that it identifies no circumstance, whether or

¹The Administrator has filed a response opposing the petition.

not properly deemed new matter,² that either demonstrates error in our original disposition of the case on respondent's appeal or otherwise presents a valid basis for altering our judgment as to the sufficiency of the proof of respondent's alleged violations or the appropriate sanction for them.³

Our determination that respondent has not provided anything constituting "new matter" warranting reconsideration under our rules of practice has fully taken into account his submission of information suggesting, for the first time in this proceeding, that his judgment on the flight which led to the charges against him may have been affected by the stress induced by his efforts to overcome the effects of chronic alcoholism. While this information was not previously known to the Board, respondent does not suggest that he was not aware at the time of the subject flight that he had a problem involving alcohol dependency or that he could not have, before the hearing in this case, secured evidence about its possible relevance to his behavior if he had wanted it to be considered as a factor in the evaluation of his conduct.⁴ We will not now reconsider respondent's case in the light of information he obviously chose not to obtain and bring to our attention before a decision on his appeal had been rendered, for his belated revelation can not reasonably be construed to constitute new matter that "could not have been discovered by the exercise of due diligence prior to the date the case was submitted to the Board." Section 821.57(d)(3).

²Under Section 821.57(d) of the Board's Rules of Practice, 49 CFR Part 821, the only petitions for reconsideration or modification that the Board will entertain in an emergency proceeding are those "based on the ground that new matter has been discovered."

³Order EA-3616 sustained charges that respondent had violated sections 121.543, 121.537(f), and 121.333(c)(3) of the Federal Aviation Regulations by leaving his duty station as pilot-in-command of a Federal Express MD-11-F aircraft without first insuring that another crewmember would take over for him, with the result that the cockpit was pilotless for a brief period. By Order EA-3673 (served September 9, 1992), the Board denied a petition filed by the Administrator seeking the expungement of language in Order EA-3616 which he asserted would unfairly have a negative impact on the career of the crewmember who had not relieved the respondent.

⁴In a letter to respondent's attorney attached as Exhibit A to his petition, respondent's physician states that respondent has "been struggling with attempt [sic] to control his drinking for at least 12 years, and his symptoms have been quite florid for the past 5 years.... There is no question in my mind but that the incident in question...is consistent with the exercise of impaired judgment secondary to chronic alcoholism."

ACCORDINGLY, IT IS ORDERED THAT:

The respondent's petition for reconsideration and modification of Board Order No. EA-3616 is denied.

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HART and HAMMERSCHMIDT, Members of the Board, concurred in the above order.